Internal Revenue
bulletin

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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2003–59, page 1014.
Cost-share payments. The Conservation Reserve Program (CRP) is a small watershed program administered by the Secretary of Agriculture that is substantially similar to the type of programs described in sections 126(a)(1) through (8) of the Code within the meaning of section 126(a)(9). All or a portion of cost-share payments received under the CRP is eligible for exclusion from gross income to the extent permitted by section 126. Rental payments and incentive payments are not cost-share payments and are not excludable from gross income.

Announcement 2003–37, page 1025.
The IRS and Treasury are considering publishing a notice of proposed rulemaking (REG–100818–01) proposing rules regarding the amount of a liability a transferee of property is treated as assuming in connection with a transfer of property and certain tax consequences that result from the transferee's assumption of such a liability. This document describes and explains the issues that IRS and Treasury are considering addressing in the proposed regulations and the rules that IRS and Treasury might propose to address some of these issues. This document also invites comments regarding these issues and rules.

EMPLOYEE PLANS

REG–157302–02, page 1021.
Proposed regulations under section 408 of the Code provide guidance regarding accounts and annuities added to qualified employer plans where such accounts and annuities are to be treated as individual retirement plans.

EXEMPT ORGANIZATIONS

Announcement 2003–39, page 1030.
A list is provided of organizations now classified as private foundations.

ESTATE TAX

Rev. Rul. 2003–61, page 1015.
Taxation of qualified family-owned business interest (QFOBI). A distribution in redemption of stock that is part of a QFOBI and that qualifies under section 303 of the Code: (1) does not affect the initial determination of whether the estate is eligible to make the QFOBI election, and (2) does not constitute a disposition under section 2057(f)(1)(B); thus under section 2057 no additional estate tax is imposed as a result of this distribution.

ADMINISTRATIVE

Rev. Proc. 2003–38, page 1017.
Commercial revitalization deduction. This procedure provides the time and manner for states to make allocations of commercial revitalization expenditures to a new or substantially rehabilitated building that is placed in service in a renewal community. This procedure also explains how a taxpayer may elect to recover the cost of the building using a more accelerated method than is otherwise allowable for depreciation purposes.

Announcement 2003–38, page 1029.
This document explains that Announcement 2003–21, Dutch Agreement on Pension Funds, was inadvertently put into Part IV instead of Part II of Bulletin 2003–17. When the Cumulative Bulletin for the first half of 2003, C.B. 2003–1, is printed, Announcement 2003–21 will be listed under Part II, Treaties and Tax Legislation.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Section 56.—Adjustments in Computing Alternative Minimum Taxable Income

In determining the alternative minimum taxable income, is there an adjustment under § 56 of the Internal Revenue Code for the commercial revitalization deduction provided by § 1400I? See Rev. Proc. 2003–38, page 1017.

Section 126.—Certain Cost-Sharing Payments

26 CFR 16A.126–1: Certain cost sharing payments — In general (Temporary).

Cost-share payments. The Conservation Reserve Program (CRP) is a small watershed program administered by the Secretary of Agriculture that is substantially similar to the type of programs described in sections 126(a)(1) through (8) of the Code within the meaning of section 126(a)(9). All or a portion of cost-share payments received under the CRP is eligible for exclusion from gross income to the extent permitted by section 126. Rental payments and incentive payments are not cost-share payments and are not excludable from gross income.

Rev. Rul. 2003–59

ISSUE

Is the Conservation Reserve Program (CRP) substantially similar to the type of programs described in § 126(a)(1) through (8) of the Internal Revenue Code, so that the CRP is within the scope of § 126(a)(9) and, thereby, cost-share payments received under the CRP are eligible for exclusion from gross income to the extent permitted by § 126?

FACTS

The CRP, authorized under Title XII of the Food Security Act of 1985, as amended, Pub. L. No. 99–198, 99 Stat. 1504, and reauthorized under the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104–127, 110 Stat. 888, is a voluntary program for soil, water, and wildlife conservation, wetland establishment and restoration, and reforestation. The Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101–624, 104 Stat. 3359, established the umbrella program "Environmental Conservation Acreage Reserve Program," which is made up of the CRP and the Wetland Reserve Program, which was determined in Rev. Rul. 97–55, 1997–2 C.B. 20, to be within the scope of § 126(a)(9).

Landowners who participate in the CRP enter into one or more 10 to 15 year cost-share contracts with the Department of Agriculture. Under a cost-share contract, a farmer or rancher agrees to implement approved conservation-related practices on the land in return for cost-share payments equal to 50 percent of the actual or average cost of establishing a practice. Typically, cost-share payments range from $20 to $500 per acre. There is no maximum cost-share payment per person, however, the per acre payment for some practices is limited based on local land values.

In addition to cost-share payments, all participants in the CRP also receive annual rental payments for the 10 to 15 year contract duration. Rental payments range from $30 to $160 per acre, depending on soil type and local market rates, plus up to an additional $9 per acre for cover maintenance, with a maximum of $50,000 per person for any fiscal year. Some participants also may receive a one-time incentive payment of up to 20 percent of the annual payment for certain practices.

The Secretary of Agriculture has determined that the CRP is a small watershed program and that the cost-share payments under the CRP are primarily for the purpose of conservation.

LAW AND ANALYSIS

Under § 126(a), gross income does not include the excludable portion of payments received under certain conservation programs set forth in § 126(a)(1) through (8). Under § 126(a)(9), a program affecting "small watersheds" that is administered by the Secretary of Agriculture also is eligible for § 126 treatment if the Commissioner determines that the program is substantially similar to the type of programs described in § 126(a)(1) through (8). See § 16A.126–1(d)(3) of the temporary Income Tax Regulations for the definition of "small watershed."

Once the Commissioner has determined that a program is substantially similar to the type of programs described in § 126(a)(1) through (8), taxpayers receiving cost-share payments under that program must determine what portion of the cost-share payments is excludable from gross income under § 126. See § 126(b)(1), and § 16A.126–1 relating to the partial exclusion for certain cost-share payments to determine what portion of the cost-share payments is excludable from gross income under § 126. The rental payments and incentive payments received under the CRP are not cost-share payments and therefore are not excludable from gross income. See § 16A.126–1.

HOLDING

The CRP is a small watershed program administered by the Secretary of Agriculture that is substantially similar to the type of programs described in § 126(a)(1) through (8) within the meaning of § 126(a)(9). All or a portion of cost-share payments received under the CRP is eligible for exclusion from gross income to the extent permitted by § 126. See § 126(b)(1) and § 16A.126–1 to determine what portion, if any, of the cost-share payments is excludable from gross income under § 126. Rental payments and incentive payments are not cost-share payments and are not excludable from gross income. See § 16A.126–1(b)(2)(iii).

DRAFTING INFORMATION

The principal author of this revenue ruling is Nicole R. Cimino of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Ms. Cimino at (202) 622–3120 (not a toll-free call).

Section 168.—Accelerated Cost Recovery System

In lieu of determining depreciation under § 168 of the Internal Revenue Code, how does a taxpayer make an election under § 1400I to recover the cost of a new or substantially rehabilitated building that is placed in service in a renewal community? See Rev. Proc. 2003–38, page 1017.

Section 1400I.—Commercial Revitalization Deduction

How does a state make an allocation of commercial revitalization expenditures to a new or substantially rehabilitated building that is placed in service in a renewal community and how does a taxpayer make an election to recover the cost of this building under § 1400I of the Internal Revenue Code? See Rev. Proc. 2003–38, page 1017.

Section 2057.—Family-Owned Business Interests

Taxation of qualified family-owned business interest (QFOBI). A distribution in redemption of stock that is part of a QFOBI and that qualifies under section 303 of the Code: (1) does not affect the initial determination of whether the estate is eligible to make the QFOBI election, and (2) does not constitute a disposition under section 2057(f)(1)(B); thus under section 2057 no additional estate tax is imposed as a result of this distribution.

Rev. Rul. 2003–61

ISSUE

Does a distribution in redemption of stock that is part of a qualified family-owned business interest (QFOBI) and that qualifies under § 303 of the Internal Revenue Code: (1) affect the initial determination of whether the estate is eligible to make the QFOBI election, or (2) constitute a disposition under § 2057(f)(1)(B) that results in the imposition of an additional estate tax?

FACTS

At the time of *D*'s death, *D* owned shares of stock in *X* corporation with an adjusted value under § 2057(d) of $3 million. No gift of *X* corporation stock was made or deemed made by *D* during *D*'s life. These shares passed to *D*'s children pursuant to the terms of *D*'s will. The value of *D*'s adjusted gross estate under § 2057(c) was $5 million. On the federal estate tax return filed for *D*'s estate, *D*'s executor elected to treat all of *D*'s stock in *X* corporation as a QFOBI under § 2057, filed the duly executed agreement referred to in § 2057(h), and claimed the maximum allowable deduction of $675,000. In all respects, the election complied with the provisions of § 2057. In order to pay the federal and state estate taxes imposed by reason of *D*'s death, *D*'s executor caused *X* corporation to redeem one-third of the *X* corporation stock in a distribution that satisfied the requirements of § 303.

LAW AND ANALYSIS

In general, under § 303(a), a distribution of property to a shareholder by a corporation in redemption of part or all of the stock of the corporation that is included in determining the decedent's gross estate for federal estate tax purposes is treated as a distribution in full payment in exchange for the redeemed stock to the extent of the sum of certain taxes and expenses. These taxes and expenses are the estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of the decedent's death, and the amount of funeral and administration expenses allowable as deductions for federal estate tax purposes. In addition to the other limitations and rules in § 303, the treatment under § 303(a) applies only to the extent that the interest of the shareholder receiving the distribution is reduced directly (or through a binding obligation to contribute) by any payment of these amounts. Section 303(b)(3).

Section 2057(a)(1) provides that, in the case of an estate to which § 2057 applies, the value of the taxable estate is determined by deducting from the value of the gross estate the adjusted value of the QFOBI of the decedent. Under § 2057(a)(2), the deduction may not exceed $675,000. One of the requirements of § 2057 is that the QFOBI either must be acquired by a qualified heir from the decedent or must pass to a qualified heir from the decedent. Section 2057(b)(2)(B).

Section 2057(f)(1) provides that additional estate tax is imposed if certain events occur within 10 years after the date of the decedent's death and before the date of the qualified heir's death. One of these events is the disposition by the qualified heir of any portion of a QFOBI, other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under § 170(h). Section 2057(f)(1)(B).

Section 2057(i)(3)(O) provides that rules similar to the rule in § 6166(g)(1)(B) shall apply for purposes of § 2057.

Section 6166(g)(1)(A) provides that the privilege of paying the estate tax in installments ceases and the unpaid tax becomes due upon notice and demand if: (i) any portion of an interest in a closely held business that qualifies under § 6166(a)(1) is distributed, sold, exchanged, or otherwise disposed of, or money and other property attributable to the interest is withdrawn from the trade or business, and (ii) the aggregate of the distributions, sales, exchanges, or other dispositions and withdrawals equals or exceeds 50 percent of the value of the interest.

Section 6166(g)(1)(B) provides that in the case of a distribution in redemption of stock to which § 303 (or so much of § 304 as relates to § 303) applies: (i) the redemption of the stock, and the withdrawal of money and other property distributed in the redemption, is not treated as a distribution or withdrawal for purposes of § 6166(g)(1)(A), and (ii) for purposes of § 6166(g)(1)(A), the value of the interest in the closely held business is considered to be its value reduced by the value of the redeemed stock. Thus, the reduction in the value of the interest pursuant to § 6166(g)(1)(B)(ii) is applicable in determining whether subsequent distributions, sales, exchanges, or other dispositions and withdrawals equal or exceed 50 percent of the value of the interest under § 6166(g)(1)(A)(ii) and does not affect the determination of whether the estate is initially eligible for the extension of time to pay under § 6166.

In applying rules similar to the rule in § 6166(g)(1)(B) for purposes of § 2057, a distribution in redemption of stock to which § 303 applies is not a disposition that triggers an additional estate tax with respect to a QFOBI and the redemption does not affect the initial determination of whether the estate is eligible to make the QFOBI election.

After the redemption caused by *D*'s executor of one-third of the *X* corporation stock in a distribution that satisfied the requirements of § 303, the adjusted value of the QFOBI ($2 million) no longer exceeds 50 percent of *D*'s adjusted gross estate ($5 million). The QFOBI election made for *D*'s estate is not affected because the distribution in redemption of the *X* corporation stock does not affect the initial determination of whether *D*'s estate is eligible to make the QFOBI election. The distribution in redemption of the *X* corporation stock is not a disposition of a portion of the QFOBI that would trigger an additional estate tax.

HOLDING

A distribution in redemption of stock that is part of a QFOBI and that qualifies under § 303: (1) does not affect the initial determination of whether the estate is eligible to make the QFOBI election, and (2) does not constitute a disposition under § 2057(f)(1)(B); thus under § 2057 no additional estate tax is imposed as a result of this distribution.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Corenna Howard and Lian Mito of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Ms. Howard or Ms. Mito at (202) 622–7830 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, §§ 56, 168, 1400I.)

Rev. Proc. 2003–38

SECTION 1. PURPOSE

This revenue procedure provides the time and manner for states to make allocations under § 1400I of the Internal Revenue Code of commercial revitalization expenditure amounts to a new or substantially rehabilitated building that is placed in service in a renewal community. This revenue procedure also explains how a taxpayer may make an election under § 1400I(a) to recover the cost of the building using a more accelerated method than is otherwise allowable under the depreciation provisions in § 168.

SECTION 2. BACKGROUND

.01 Section 1400I, as added by § 101(a) of the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106–554, 114 Stat. 2763A–587 (December 21, 2000), allows a taxpayer to elect to recover the cost of a qualified revitalization building using a more accelerated method than is otherwise allowable under § 168. Pursuant to § 1400I(a), a taxpayer may elect either (1) to deduct one-half of any qualified revitalization expenditures chargeable to a capital account with respect to any qualified revitalization building for the taxable year in which the building is placed in service, or (2) to amortize all of these expenditures ratably over the 120-month period beginning with the month in which the building is placed in service. If the taxpayer makes a commercial revitalization deduction election as provided in this revenue procedure, a depreciation deduction is not allowable for the amounts deducted or amortized under § 1400I(a). The commercial revitalization deduction provided by § 1400I(a) is allowed for both regular tax and alternative minimum tax purposes.

.02 Under § 1400I(b)(1), a qualified revitalization building is any building and its structural components (such terms are defined in § 1.48–1(e) of the Income Tax Regulations) if: (1) the building is placed in service by the taxpayer in a renewal community (as defined in § 1400E) and the original use of the building begins with the taxpayer; or (2) the building is substantially rehabilitated (within the meaning of § 47(c)(1)(C)) by the taxpayer and is placed in service by the taxpayer after the rehabilitation in a renewal community.

.03 The term "qualified revitalization expenditure" is defined in § 1400I(b)(2)(A) as, in general, any amount properly chargeable to a capital account for property for which depreciation is allowable under § 168 and that is either (1) nonresidential real property (as defined in § 168(e)(2)(B)), or (2) § 1250 property (as defined in § 1250(c)) that is functionally related and subordinate to the nonresidential real property. However, pursuant to § 1400I(c), the aggregate amount that may be treated as qualified revitalization expenditures with respect to any qualified revitalization building cannot exceed the lesser of (1) $10 million, or (2) the commercial revitalization expenditure amount allocated to the building under § 1400I by the commercial revitalization agency for the state in which the building is located. Accordingly, a taxpayer may make a commercial revitalization deduction election for a qualified revitalization building only to the extent that qualified commercial revitalization expenditure amounts are allocated to the building. If the amount of that allocation exceeds the amount properly chargeable to a capital account for the building, the qualified revitalization expenditures eligible for the commercial revitalization deduction election are limited to the amount properly chargeable to a capital account for the building.

.04 Under § 1400I(d), the commercial revitalization agency for each state is permitted to allocate up to $12 million of commercial revitalization expenditure amounts with respect to each renewal community located within the state for each calendar year after 2001 and before 2010. Pursuant to § 1400I(e), the allocation must be made pursuant to a qualified allocation plan (as defined in § 1400I(e)(2)) that is approved by the governmental unit of which the commercial revitalization agency is a part. Further, the commercial revitalization agency must notify the chief executive officer (or its equivalent) of the local jurisdiction in which the qualified revitalization building is located of the allocation and provide that individual a reasonable opportunity to comment on the allocation. The term "commercial revitalization agency" is defined in § 1400I(d)(3) as any agency authorized by a state to carry out § 1400I. Neither the original nor a copy of the qualified allocation plan is to be sent to the Internal Revenue Service.

.05 Pursuant to § 1400I(d)(4), an allocation under § 1400I is made at the same time and in the same manner as under the low-income housing credit provisions in § 42(h)(1) and (7). Section 42(h)(1)(B) provides that, except in the case of an allocation that meets the requirements of § 42(h)(1)(C), (D), (E), or (F), an allocation must be made not later than the close of the calendar year in which the building is placed in service. Further, § 1.42–1T(d)(8)(i) provides that the allocation may not be made prior to the calendar year in which the building is placed in service. Accordingly, the low-income housing credit allocation is generally made in the calendar year in which the building is placed in service.

Nevertheless, certain allocations that meet the requirements of § 42(h)(1)(C), (D), (E), or (F) are not made in the calendar year in which the building is placed in service. An allocation meets the requirements of § 42(h)(1)(C) if there is a binding commitment, not later than the close of the calendar year in which the building is placed in service, by the state agency to allocate a specified dollar amount to the building beginning in a specified later taxable year. An allocation with respect to an increase in qualified basis meets the requirements of § 42(h)(1)(D) only if, among other things, the allocation is made not later than the close of the calendar year in which ends the taxable year to which the allocation will first apply. Pursuant to § 42(h)(1)(E) and (F) and § 1.42–6, a carryover allocation is allowed with respect to a single-building project or multi-building project that is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made, provided certain basis requirements set forth therein are met.

SECTION 3. GENERAL RULES FOR AN ALLOCATION OF COMMERCIAL REVITALIZATION EXPENDITURE AMOUNTS

.01 *Types of allocations allowed*. A commercial revitalization agency may make the following types of allocations of the commercial revitalization expenditure amount (commercial revitalization expenditure allocation):

(1) An allocation in the calendar year in which a qualified revitalization building is placed in service, as described in section 4 of this revenue procedure;

(2) A binding commitment to make an allocation of a specified dollar amount to a qualified revitalization building in the calendar year in which the building is placed in service, as described in section 5 of this revenue procedure; and

(3) A carryover allocation for a single-building project or a multi-building project, as described in section 6 of this revenue procedure.

.02 *Allocation must be made for each building*. A separate commercial revitalization expenditure allocation must be made for each qualified revitalization building whether new or substantially rehabilitated.

.03 *$12 million ceiling for each renewal community*. Each state is permitted to allocate up to $12 million of commercial revitalization expenditure amounts to each renewal community located within the state for each calendar year after 2001 and before 2010 (the commercial revitalization expenditure ceiling). The $12 million of commercial revitalization expenditure amounts for any renewal community may not be allocated, in whole or in part, to another renewal community. However, see section 8.02 of this revenue procedure for the special rule for the 2002 ceiling.

.04 *Carryforward of ceiling is not permitted.* If a commercial revitalization agency does not allocate all of the commercial revitalization expenditure ceiling for a renewal community for any given calendar year, the unused ceiling amount may not be carried forward to a later year. However, see section 8.01 of this revenue procedure for the special rule for any unused 2002 ceiling amount.

SECTION 4. ALLOCATIONS FOR BUILDINGS PLACED IN SERVICE IN THE ALLOCATION YEAR

.01 *Time for making a commercial revitalization expenditure allocation*. Except as provided in sections 5 and 6 of this revenue procedure, a commercial revitalization expenditure allocation to a qualified revitalization building must be made in the calendar year in which that building is placed in service by the taxpayer.

.02 *Manner for making a commercial revitalization expenditure allocation*.

(1) *In general*. A commercial revitalization expenditure allocation is made for a qualified revitalization building when an allocation document containing the information described in section 4.02(2) of this revenue procedure is completed, signed, and dated by an authorized official of the commercial revitalization agency. The agency must send a copy of the allocation document to the taxpayer receiving the allocation no later than 60 calendar days following the close of the calendar year in which the allocation is made. Neither the original nor a copy of the allocation document is to be sent to the Service.

(2) *Information required in the allocation document*. The allocation document must include:

(a) The name, address, and taxpayer identification number of the commercial revitalization agency making the commercial revitalization expenditure allocation;

(b) The name, address, and taxpayer identification number of the taxpayer receiving the allocation;

(c) The address of the qualified revitalization building, or if none exists, a specific description of the location of each building;

(d) The date of the allocation of the commercial revitalization expenditure amount;

(e) The commercial revitalization expenditure amount allocated to the qualified revitalization building on that date; and

(f) A certification under penalties of perjury by an authorized official of the commercial revitalization agency that the official has examined the information in the allocation document, and, to the best of the official's knowledge and belief, this information is true, correct, and complete.

SECTION 5. BINDING COMMITMENTS

Before or in the calendar year in which a qualified revitalization building is placed in service, a commercial revitalization agency of a state may enter into a binding commitment to allocate a specified dollar amount of the commercial revitalization expenditure ceiling in the calendar year in which the building is placed in service. This allocation must be made in accordance with section 4 of this revenue procedure. A binding commitment, in and of itself, is not an allocation.

SECTION 6. CARRYOVER ALLOCATIONS

.01 *In general*.

(1) *Definition of a carryover allocation*. A carryover allocation is an allocation that is made with respect to a qualified revitalization building that is placed in service by a taxpayer not later than the close of the second calendar year following the calendar year in which the allocation is made, provided the taxpayer's basis in the project of which the building is a part (as of the later of the date that is 6 months after the date that the allocation is made or the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer's reasonably expected basis in the project as of the close of the second calendar year following the calendar year in which the allocation is made. A carryover allocation may be for either a single-building project (a building-based allocation) or a multi-building project (a project-based allocation). A carryover allocation reduces the commercial revitalization expenditure ceiling for the calendar year in which the allocation is made. If a carryover allocation is made after June 30, 2002, and before January 1, 2003, see section 8.03 of this revenue procedure for the special rule for the 10 percent basis requirement.

(2) *Determination of reasonably expected basis*. The taxpayer's reasonably expected basis in a project is the taxpayer's reasonably expected adjusted basis in land and depreciable property, as determined under §§ 1012 and 1016, that is reasonably expected to be part of the project, whether or not these amounts are includible in the basis of the qualified revitalization building.

.02 *Time and manner for making a carryover allocation of commercial revitalization expenditure amounts*.

(1) *In general*. A carryover allocation of commercial revitalization expenditure amounts is made for a qualified revitalization building when a carryover allocation document containing the information described in section 6.02(2) of this revenue procedure is completed, signed, and dated by an authorized official of the commercial revitalization agency. The agency must send a copy of the carryover allocation document to the taxpayer receiving the carryover allocation no later than 60 calendar days following the close of the calendar year in which the carryover allocation is made. Neither the original nor a copy of the carryover allocation document is to be sent to the Service.

(2) *Information required in the carryover allocation document*. The carryover allocation document must include:

(a) The name, address, and taxpayer identification number of the commercial revitalization agency making the carryover allocation of the commercial revitalization expenditure amounts;

(b) The name, address, and taxpayer identification number of the taxpayer receiving the carryover allocation;

(c) The address of each qualified revitalization building in the project, or if none exists, a specific description of the location of each building;

(d) The date of the carryover allocation of the commercial revitalization expenditure amount;

(e) The commercial revitalization expenditure amount allocated to the qualified revitalization building in a single-building project or to the multi-building project, as applicable, on that date;

(f) The taxpayer's reasonably expected basis in the project (land and depreciable property) as of the close of the second calendar year following the calendar year in which the allocation is made;

(g) The date that each qualified revitalization building in the project is expected to be placed in service by the taxpayer; and

(h) A certification under penalties of perjury by an authorized official of the commercial revitalization agency that the official has examined the information in the carryover allocation document, and, to the best of the official's knowledge and belief, this information is true, correct, and complete.

SECTION 7. COMMERCIAL REVITALIZATION DEDUCTION ELECTION

.01 *In general*. The commercial revitalization deduction election provided by § 1400I(a) is made by each person owning the qualified revitalization building (for example, by the member of a consolidated group, the partnership, or the S corporation that owns the building). This election must be made for the taxable year in which the building is placed in service. The election only applies to the extent that qualified commercial revitalization expenditure amounts are allocated to the building by the commercial revitalization agency of the state in which the building is located. If the amount of that allocation exceeds the amount properly chargeable to a capital account for the building, the qualified revitalization expenditures eligible for the commercial revitalization deduction election are limited to the amount properly chargeable to a capital account for the building.

.02 *Time and manner for making the election*.

(1) *In general*. The commercial revitalization deduction election must be made by the due date (including extensions) of the federal tax return for the taxable year in which the qualified revitalization building is placed in service by the taxpayer. The election must be made in the manner prescribed in the instructions for Form 4562, *Depreciation and Amortization*. For 2002, the taxpayer should refer to the instructions for line 42 of Form 4562.

(2) *Limited relief for late election*.

(a) *Automatic 6-month extension*. Pursuant to § 301.9100–2(b) of the Procedure and Administration Regulations, an automatic extension of 6 months from the due date of the federal tax return (*excluding* extensions) for the placed-in-service year of the qualified revitalization building is granted to make the commercial revitalization deduction election, provided the taxpayer timely filed the taxpayer's federal tax return for the placed-in-service year and the taxpayer satisfies the requirements in § 301.9100–2(c) and § 301.9100–2(d).

(b) *Other extensions*. A taxpayer that fails to make the commercial revitalization deduction election for the qualified revitalization building as provided in section 7.02(1) or 7.02(2)(a) of this revenue procedure but wants to do so must file a request for an extension of time to make the election under the rules in § 301.9100–3.

.03 *Scope of the Election*. If a taxpayer placed in service more than one qualified revitalization building during a taxable year, the taxpayer may make the commercial revitalization deduction election for the placed-in-service year separately for each building as provided in section 7.02 of this revenue procedure. For example, a taxpayer that places in service in 2003 three qualified revitalization buildings for which commercial revitalization expenditure amounts are allocated, may elect to deduct one-half of the qualified revitalization expenditures for one building and elect to amortize the qualified revitalization expenditures for the other two buildings ratably over a 120-month period.

.04 *Revocation*. The commercial revitalization deduction election is revocable only with the prior written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling in accordance with the provisions of Rev. Proc. 2003–1, 2003–1 I.R.B. 1 (or its successor).

.05 *Failure to make commercial revitalization deduction election*. If a taxpayer does not make the commercial revitalization deduction election for a qualified revitalization building within the time and in the manner prescribed in section 7.02 of this revenue procedure, the amount of depreciation allowable for that property must be determined under § 168 for the placed-in-service year and for all subsequent years. Thus, the commercial revitalization deduction election cannot be made by the taxpayer in any manner other than as set forth in section 7.02 of this revenue procedure (for example, through a request under § 446(e) to change the taxpayer's method of accounting).

SECTION 8. SPECIAL RULES FOR CEILING, CARRYOVER ALLOCATION, AND ALLOCATION DOCUMENT

The following special rules apply to the 2002 or 2003 commercial revitalization expenditure ceiling, to certain carryover allocations made in 2002, and to any allocation document made in 2002:

.01 *Unallocated portion of 2002 ceiling*. The $12 million commercial revitalization expenditure ceiling for 2003 for a renewal community is increased by any portion of the 2002 commercial revitalization expenditure ceiling for that renewal community that was not allocated in 2002. For example, if State A has only one renewal community, RC, and only $7 million of the $12 million commercial revitalization expenditure ceiling for 2002 for RC was allocated to qualified revitalization buildings in RC in 2002, the commercial revitalization expenditure ceiling for 2003 for RC in State A is $17 million.

.02 *Aggregation of 2002 ceiling*. The 2002 commercial revitalization expenditure ceiling for each renewal community within a state may be aggregated and apportioned to any renewal community within the state. However, after 2002, no aggregation of the ceiling is permitted, including any portion of the 2003 ceiling that is attributable to the unallocated portion of the 2002 ceiling in accordance with section 8.01 of this revenue procedure (*see* section 3.03 of this revenue procedure).

For example, State B has two renewal communities, RC1 and RC2. For 2002, State B aggregated the $12 million ceilings for RC1 and RC2 resulting in a total 2002 ceiling of $24 million. Of that amount, $15 million was apportioned to RC1 and $9 million was apportioned to RC2 for 2002. This aggregation and apportionment of the 2002 ceiling for RC1 and RC2 are permitted pursuant to section 8.02 of this revenue procedure. In 2002, $12 million of the $15 million of RC1's 2002 ceiling was allocated to qualified revitalization buildings in RC1 and $7 million of the $9 million of RC2's 2002 ceiling was allocated to qualified revitalization buildings in RC2. Pursuant to sections 3.03 and 8.01 of this revenue procedure, the commercial revitalization expenditure ceiling for 2003 for RC1 is $15 million ($12 million ceiling for 2003 plus the $3 million not allocated from the 2002 ceiling) and for RC2 is $14 million ($12 million ceiling for 2003 plus the $2 million not allocated from the 2002 ceiling). In accordance with sections 3.03 and 8.02 of this revenue procedure, the $15 million ceiling for 2003 for RC1 and the $14 million ceiling for 2003 for RC2 may not be aggregated and apportioned.

.03 *Carryover allocation*. If a carryover allocation is made after June 30, 2002, and before January 1, 2003, the taxpayer must meet the 10 percent basis requirement set forth in section 6.01(1) of this revenue procedure by December 31, 2003.

.04 *Allocation document*. Any allocation document made in 2002 that is not made in the manner prescribed in section 4.02 or 6.02 of this revenue procedure, as applicable, will be deemed to meet the requirements of section 4.02 or 6.02 of this revenue procedure, as applicable, if the document contains sufficient information to identify the commercial revitalization agency, the taxpayer, the qualified revitalization building, the date of the allocation, and the commercial revitalization expenditure amount allocated to the qualified revitalization building in a single-building project or to the multi-building project, as applicable.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for qualified revitalization buildings placed in service after December 31, 2001.

SECTION 10. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1818.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 4.02, 5, and 6.02 of this revenue procedure. This information is required to obtain an allocation of commercial revitalization expenditure amounts for a qualified revitalization building in a renewal community. This information will be used by the Service to verify that the taxpayer is entitled to the commercial revitalization deduction. The collections of information are required to obtain a benefit. The likely respondents are state or local governments and business or other for-profit institutions.

The estimated total annual reporting burden is 200 hours.

The estimated annual burden per respondent varies from 1 to 4 hours, depending on individual circumstances, with an estimated average of 2.5 hours. The estimated number of respondents is 80.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 11. REQUEST FOR COMMENTS

The Service and Treasury Department welcome comments on this revenue procedure. Comments should be submitted in writing by September 15, 2003, to:

Internal Revenue Service
Attn: CC:IT&A:RU
(REV. PROC. 2003–38), Room 5226
P.O. Box 7604
Benjamin Franklin Station
Washington, DC 20044.

Alternatively, comments may be submitted by e-mail to: *Notice.Comments@IRSCOUNSEL.TREAS.GOV*. Please refer to Rev. Proc. 2003–38 in the e-mail.

SECTION 12. DRAFTING INFORMATION

The principal author of this revenue procedure is Emily Kalovidouris of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Ms. Kalovidouris at (202) 622–3110 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Deemed IRAs in Qualified Retirement Plans

REG–157302–02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance regarding accounts or annuities added to qualified employer plans where such accounts or annuities are to be treated as individual retirement plans. These regulations reflect changes made to the law by the Economic Growth and Tax Relief Reconciliation Act of 2001 and by the Job Creation and Worker Assistance Act of 2002. These regulations will affect administrators of, participants in, and beneficiaries of qualified employer plans.

DATES: Written and electronic comments and requests for a public hearing must be received by **August 18, 2003**.

ADDRESSES: Send submissions to: CC:PA:RU (REG–157302–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–157302–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda C. Phillips or Robert M. Walsh at (202) 622–6090; concerning submissions and delivery of comments, LaNita Van Dyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service,** Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **July 21, 2003**. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §1.408(q)–1(f)(2). This collection of information is required by the IRS to ensure that the separate requirements of qualified employer plans and individual retirement plans are satisfied. The collection of information is required to obtain a benefit. Specifically, this information is required for a taxpayer who wants to include individual retirement plans as part of its qualified employer plan.

Estimated total annual reporting and/or recordkeeping burden: 40,000 hours

Estimated average annual burden hours per respondent and/or recordkeeper: 50 hours.

Estimated number of respondents and/or recordkeepers: 800.

The estimated frequency of responses is on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 408(q) of the Internal Revenue Code (Code) relating to the addition of separate accounts and annuities to qualified employer plans. Section 408(q) was added to the Code by section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107–16 (115 Stat. 117) and amended by section 411 of the Job Creation and Worker Assistance Act of 2002 (JCWAA), Public Law 107–147 (116 Stat. 21).

Explanation of Provisions

Section 408(q) provides that, if a qualified employer plan allows employees to make voluntary employee contributions to a separate account or annuity established under the plan and under the terms of the qualified employer plan such account or annuity meets the applicable requirements of section 408 or section 408A for an individual retirement account or annuity, then such account or annuity shall be treated for purposes of the Code in the same manner as an individual retirement plan rather than as a qualified employer plan. It further provides that contributions to such a "deemed IRA" shall be treated as contributions to the deemed IRA rather than to the qualified employer plan. Section 408(q) also expressly provides that the prohibition of commingling IRA assets with other property except in a common trust fund or common investment fund shall not apply to deemed IRAs. These proposed regulations define *qualified employer plan* and *voluntary employee contribution* as they are defined in section 408(q) of the Code.

Rules regarding deemed IRAs are also provided in section 4(c) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829) (ERISA), 29 U.S.C. 1003(c), as amended by Public Law 107–147 (116 Stat. 21). Section 4(c) provides that if a pension plan allows an employee to make voluntary employee contributions to a deemed IRA under section 408(q) of the Code, then the deemed IRA shall not be treated as part of such plan (or as a separate pension plan) for purposes of any provision of Title I of ERISA other than section 403(c), 404, or 405 (relating to exclusive benefit, and fiduciary and co-fiduciary responsibilities). Section 4(c), as amended by JCWAA, further provides that the enforcement and administration rules of part 5 of subtitle B of Title I of ERISA apply to deemed IRAs and that the applicable ERISA provisions shall apply to deemed IRAs in a manner similar to their application to a simplified employee pension (SEP) under Code section 408(k). Because Title I of ERISA is within the jurisdiction of the Department of Labor, these regulations do not address the application of Title I to deemed IRAs. Also, these regulations do not address the application of Code section 4975 to deemed IRAs. Section 102 of Reorganization Plan No. 4 of 1978 provides that the authority to interpret section 4975 has been transferred to the Department of Labor.

In general, these proposed regulations provide that a qualified employer plan and a deemed IRA are to be treated as separate entities under the Code and that each entity is subject to the rules generally applicable to that entity for purposes of the Code. Thus, a qualified employer plan (excluding the deemed IRA portion of the plan), whether it is a plan under section 401(a) (including defined benefit plans), 403(a), or 403(b), or a governmental plan under section 457(b), is subject to the rules applicable to that type of plan rather than to the rules applicable to IRAs under section 408 or 408A. Similarly, the deemed IRA portion of the qualified employer plan is generally subject to the rules applicable to traditional and Roth IRAs under sections 408 and 408A, respectively, and not to the rules applicable to plans under section 401(a), 403(a), 403(b), or 457.

Accordingly, these proposed regulations provide that issues regarding eligibility, participation, disclosure, nondiscrimination, contributions, distributions, investments, and plan administration are generally to be resolved under the separate rules (if any) applicable to each entity. In addition, these regulations specifically address several issues regarding the separate applicability of plan and IRA rules. For example, these proposed regulations provide that the availability of a deemed IRA is not a benefit, right or feature of the qualified employer plan under §1.401(a)(4)–4. Thus, the availability of a deemed IRA is not subject to §1.401(a)(4)–1(b)(3) which requires that benefits, rights, and features be available in a plan in a nondiscriminatory manner.

Similarly, these proposed regulations provide that the rules applicable to deemed IRAs with respect to the trusteeship of the IRA and deductibility of IRA contributions are the rules applicable to traditional IRAs and Roth IRAs under the Code. Thus, for example, taxpayers with compensation in excess of the limits imposed by sections 219 and 408A may either not be able to make contributions to deemed IRAs or the deductibility of such contributions may be limited. For deemed IRAs that are traditional IRAs, as with other traditional IRAs, the employee must make a determination as to whether a particular contribution is deductible and make the proper entries on his or her tax return. Pursuant to section 219(f)(3), a contribution made on account of the preceding taxable year will be treated as made on the last day of such taxable year if the contribution is actually made to the IRA not later than the time prescribed by law for filing the return for such taxable year (not including extensions). However, section 219(f)(5), regarding the taxable year in which amounts paid by an employer to an individual retirement plan are includible in the employee's income, is not applicable to deemed IRAs. Thus, amounts withheld from an employee's compensation and contributed to a deemed IRA, and which are treated as made on the last day of the preceding taxable year pursuant to section 219(f)(3), shall be includible in income in the year in which they are withheld rather than in the preceding taxable year.

The proposed regulations also provide that the minimum distribution rules of section 401(a)(9) of the Code must be met separately with respect to the qualified employer plan and the deemed IRA. The determination of whether a qualified employer plan satisfies the required minimum distribution rules is made without regard to whether a participant satisfies the required minimum distribution rules with respect to the deemed IRA.

Although section 408(a) provides that an individual retirement account is a trust, these regulations do not require that a separate trust be created for each deemed IRA that is an individual retirement account. Rather, the regulations provide that all such deemed IRAs may be held in a single trust as long as that trust is separate from the trust that holds the other assets of the plan. Where a single trust is created for the deemed IRAs, the regulations also provide that there must be separate accounting for each deemed IRA and each deemed IRA must satisfy all of the requirements of section 408(a) (except the prohibition of commingling under paragraph (a)(5) of that section). These proposed regulations also provide a comparable rule for deemed IRAs that are individual retirement annuities.

These regulations provide three exceptions to the general rule that the qualified employer plan and the deemed IRA are separate entities subject to their separate rules for purposes of the Code. First, the regulations state that the qualified employer plan document must contain the deemed IRA provisions. In general, the plan document must provide for a deemed IRA and a deemed IRA must be in effect at the time the deemed IRA contributions are accepted. However, plan sponsors who want to provide deemed IRAs for plan years beginning in 2003 are not required to have such provisions in their plan document before the end of such plan years. See Revenue Procedure 2003–13, 2003–4 I.R.B. 317.

Second, pursuant to section 408(q)(1), the prohibition of section 408(a)(5) on the commingling of IRA assets with other property except in a common trust fund or a common investment fund is not applicable to the assets of a deemed IRA. Thus, the assets of the deemed IRA may be commingled for investment purposes with the assets of the other portion of the plan. Where the assets are commingled, the regulations require that separate accounts be maintained and that gains and losses must be allocated to these separate accounts. For example, if a deemed IRA is established under a defined contribution plan that is qualified under section 401(a) and the assets of the plan and the deemed IRA are commingled for investment purposes, then any gains or losses from the investment of the commingled assets of an employee must be allocated to the separate accounts of the employee under the deemed IRA and the plan.

Third, these proposed regulations provide that the failure of any of the deemed IRAs maintained by the plan to satisfy the applicable requirements of section 408 or 408A will cause the plan as a whole to fail to satisfy the plan's qualification requirements. Section 408(q) states that if a qualified employer plan elects to allow voluntary employee contributions to a separate account or annuity and that separate account or annuity meets the applicable requirements of section 408 or section 408A, then the account or annuity will be treated as an individual retirement plan rather than as a qualified employer plan. Section 408(q) applies only if the deemed IRAs maintained by the plan meet the requirements of section 408 or section 408A. If any of the deemed IRAs do not meet the applicable requirements, then section 408(q) does not apply, and the qualified employer plan will fail to satisfy its qualification requirements.

These proposed regulations provide a different rule where the portion of the plan that is not a deemed IRA fails to satisfy the qualification requirements of section 401(a). In that case, the deemed IRA is not a deemed IRA because section 408(q) does not apply where the plan is not a qualified employer plan. The regulations provide, however, that although the account or annuity that was intended to be a deemed IRA is not a deemed IRA, it may still be treated as a traditional or a Roth IRA if it satisfies the applicable requirements of section 408 or 408A (including the prohibition of commingling under paragraph (a)(5) of section 408).

If, as discussed above, a qualified employer plan or a deemed IRA fails to satisfy the applicable qualification requirements, it may nevertheless be treated as satisfying those requirements if the Employee Plans Compliance Resolution System (EPCRS), Rev. Proc. 2002–47, 2002–29 I.R.B. 133, or other administrative practice is used to correct the qualification failures. In this regard, the IRS intends that when Rev. Proc. 2002–47 is updated, it will include provisions permitting submissions for deemed IRAs.

These regulations also provide that a deemed IRA may be either a traditional IRA under section 408 or a Roth IRA under section 408A. However, because contributions to deemed IRAs are limited to employee contributions, while SIMPLE IRAs under section 408(p) and SEPs under section 408(k) may only receive employer contributions, the regulations provide that SIMPLE IRAs and SEPs may not be used as deemed IRAs.

As noted above, these regulations provide a general principle that a qualified employer plan and the deemed IRA feature are generally treated as separate entities under the Code and each is subject to the rules applicable to that entity. This principle can be applied to address a variety of issues which might arise with respect to deemed IRAs and, as a result, the regulations do not contain specific provisions addressing these issues. For example, as noted in Announcement 99–2, 1999–1 C.B. 305, employers may permit employees to contribute to traditional or Roth IRAs by direct deposits through payroll deduction. In addition, employees making direct deposits to traditional IRAs of deductible contributions may be able to adjust their federal income tax withholding to receive a more immediate tax benefit from their contributions. Because the IRA rules apply to deemed IRAs as they would to traditional and Roth IRAs, the provisions of Announcement 99–2 apply to deemed IRAs.

Similarly, these regulations expressly provide that the rules applicable to rollovers and transfers to and from IRAs also apply to rollovers and transfers to and from deemed IRAs, but the regulations do not address all of the aspects of such rollovers or transfers. For example, because section 408(c)(3) permits the surviving spouse of an IRA owner to treat the IRA as his or her own, the same rules apply to deemed IRAs although not expressly stated in these regulations. Thus, in accordance with section 408(c)(3), a qualified employer plan may permit a surviving spouse to treat a decedent's deemed IRA as his or her own. However, the surviving spouse, as a non-employee, may not make voluntary employee contributions to that deemed IRA.

Also, because the qualified employer plan and the deemed IRA are generally treated as separate entities, the early distribution rules of section 72(t) are applied separately to the two entities. Thus, a determination as to whether a distribution is a part of a series of substantially equal periodic payments under section 72(t)(2)(iv) will be determined separately for the qualified employer plan and for the deemed IRA.

Proposed Effective Date

The regulations are proposed to apply beginning on or after, August 1, 2003. Taxpayers may rely upon these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. The collection of information in the regulations is in §1.408(q)–1(f)(2) and consists of the requirement that deemed IRAs must be held in trusts or annuity contracts separate from the trust or annuity contract of the qualified employer plan. This certification is based on the fact that the cost of maintaining these separate trusts and annuity contracts is small, particularly for small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Robert M. Walsh and Linda C. Phillips, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§1.408(q)–1 also issued under 26 U.S.C. 408(q). * * *

Par. 2. Section 1.408(q)–1 is added to read as follows:

§1.408(q)–1 Deemed IRAs in qualified employer plans.

(a) *In general*. Under section 408(q) a qualified employer plan may permit employees to make voluntary employee contributions to a separate account or annuity established under the plan. If the requirements of section 408(q) and this section are met, such account or annuity is treated in the same manner as an individual retirement plan under section 408 or section 408A (and contributions to such an account or annuity are treated as contributions to an individual retirement plan and not to the qualified employer plan). The account or annuity is referred to as a deemed IRA.

(b) *Types of IRAs*. If the account or annuity meets the requirements applicable to traditional IRAs under section 408, the account or annuity is deemed to be a traditional IRA, and if the account or annuity meets the requirements applicable to Roth IRAs under section 408A, the account or annuity is deemed to be a Roth IRA. Simplified employee pensions (SEPs) under section 408(k) and SIMPLE IRAs under section 408(p) may not be used as deemed IRAs.

(c) *Separate entities*. Except as provided in paragraph (d) and (g) of this section, the qualified employer plan and the deemed IRA are treated as separate entities under the Internal Revenue Code and are subject to the separate rules applicable to qualified employer plans and IRAs, respectively. Issues regarding eligibility, participation, disclosure, nondiscrimination, contributions, distributions, investments, and plan administration are generally to be resolved under the separate rules (if any) applicable to each entity under the Internal Revenue Code.

(d) *Exceptions*. The following exceptions to treatment of a deemed IRA and the qualified employer plan as separate entities apply:

(1) The plan document of the qualified employer plan must contain the deemed IRA provisions and a deemed IRA must be in effect at the time the deemed IRA contributions are accepted. Notwithstanding the preceding sentence, employers that want to provide for deemed IRAs for plan years beginning before January 1, 2004, (but after December 31, 2002) are not required to have such provisions in their plan documents before the end of such plan years, and

(2) The requirements of section 408(a)(5) regarding commingling of assets do not apply to deemed IRAs. Accordingly, the assets of a deemed IRA may be commingled for investment purposes with those of the qualified employer plan. However, the restrictions on the commingling of plan and IRA assets with non-plan assets apply to the assets of the qualified employer plan and the deemed IRA.

(e) *Application of distribution rules*. (1) Rules applicable to distributions from qualified employer plans under the Internal Revenue Code and regulations do not apply to distributions from deemed IRAs. Instead, the rules applicable to distributions from IRAs apply to distributions from deemed IRAs. Also, any restrictions that a trustee, custodian or insurance company is permitted to impose on distributions from traditional and Roth IRAs may be imposed on distributions from deemed IRAs (for example, early withdrawal penalties on annuities).

(2) The required minimum distribution rules of section 401(a)(9) must be met separately with respect to the qualified employer plan and the deemed IRA. The determination of whether a qualified employer plan satisfies the required minimum distribution rules of section 401(a)(9) is made without regard to whether a participant satisfies the required minimum distribution requirements with respect to the deemed IRA that is established under such plan.

(f) *Additional rules*. (1) *Trustee*. The trustee or custodian of an individual retirement account must be a bank, as required by section 408(a)(2), or, if the trustee is not a bank, as defined in section 408(n), the trustee must be an entity that receives approval from the Internal Revenue Service to serve as a nonbank trustee or nonbank custodian pursuant to §1.408–2(e) of the regulations.

(2) *Separate trusts and annuity contracts*. (i) Deemed IRAs that are individual retirement accounts may be held in a single trust (rather than in separate, individual trusts), provided the trust would qualify as a single plan within the meaning of §1.414(l)–1(b). See also §1.410(b)–7(a) and (b). However, any trust holding deemed IRA assets must be separate from the trust holding the other assets of the qualified employer plan. A deemed IRA trust must be created or organized in the United States for the exclusive benefit of the participants. In addition, the written governing instrument creating the trust must satisfy the requirements of paragraphs (1), (2), (3), (4), and (6) of section 408(a), and there must be separate accounting for the interest of each participant.

(ii) Deemed IRAs that are individual retirement annuities may be held under a single annuity contract or under separate annuity contracts. However, any such contract must be separate from any annuity contract or contracts for the qualified employer plan. In addition, such contract must satisfy the requirements of section 408(b) and there must be separate accounting for the interest of each participant.

(3) *Deductibility*. The deductibility of voluntary employee contributions to a deemed traditional IRA is determined in the same manner as if it were made to any other traditional IRA. Thus, for example, taxpayers with compensation that exceeds the limits imposed by section 219(g) may not be able to make contributions to deemed IRAs, or the deductibility of such contributions may be limited in accordance with sections 408(a) and 219(g). However, section 219(f)(5), regarding the taxable year in which amounts paid by an employer to an individual retirement plan are includible in the employee's income, is not applicable to deemed IRAs.

(4) *Rollovers and transfers*. The same rules apply to rollovers and transfers to and from deemed IRAs as apply to rollovers and transfers to and from other IRAs. Thus, for example, an employee may request and receive a distribution of his or her deemed

IRA account balance and may roll it over to an eligible retirement plan in accordance with section 408(d)(3), regardless of whether that employee may receive a distribution of any other plan benefits.

(5) *Nondiscrimination*. The availability of a deemed IRA is not a benefit, right or feature of the qualified employer plan under §1.401(a)(4)–4 of the regulations.

(g) *Disqualifying defects*. If the qualified employer plan fails to satisfy its qualification requirements, either in form or in operation, section 408(q) does not apply. Accordingly, any account or annuity maintained under the plan as a deemed IRA is not a deemed IRA, and its status as an IRA will be determined by considering whether the account or annuity satisfies the applicable requirements of section 408 and 408A (including the prohibition of commingling under paragraph (a)(5) of section 408). Also, if any of the deemed IRAs fail to satisfy the applicable requirements of section 408 or 408A, section 408(q) does not apply and the plan will fail to satisfy the plan's qualification requirements.

(h) *Definitions*. The following definitions apply for purposes of this section:

(1) *Qualified employer plan*. A *qualified employer plan* is a plan described in section 401(a), an annuity plan described in section 403(a), a section 403(b) plan, or a governmental plan under section 457(b).

(2) *Voluntary employee contribution*. A *voluntary employee contribution* is any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C)) which is made by an individual as an employee under a qualified employer plan that allows employees to elect to make contributions to deemed IRAs and with respect to which the individual has designated the contribution as a contribution to which section 408(q) applies.

(i) *Effective date*. These regulations are applicable beginning on or after August 1, 2003.

David A. Mader,
Assistant Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on May 19, 2003, 8:45 a.m., and published in the issue of the Federal Register for May 20, 2003, 68 F.R. 27493)

Liabilities Assumed in Certain Transactions

Announcement 2003–37

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The IRS and Treasury are considering publishing a notice of proposed rulemaking (REG–100818–01) proposing rules regarding the amount of a liability a transferee of property is treated as assuming in connection with a transfer of property and certain tax consequences that result from the transferee's assumption of such a liability. This document describes and explains the issues that the IRS and Treasury are considering addressing in the notice of proposed rulemaking and the rules that the IRS and Treasury might propose to address some of these issues. This document also invites comments regarding these issues and rules.

DATES: Written or electronic comments must be received by August 4, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–100818–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:PA:RU (REG–100818–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposals, please contact Douglas Bates, (202) 622–7550 (not a toll-free number). Concerning submissions, please contact Treena Garrett, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Background

Sections 357(d) and 362(d) of the Internal Revenue Code (Code) were enacted as part of the Miscellaneous Trade and Technical Corrections Act of 1999 (Public Law 106–36) and are effective for transfers after October 18, 1998. Section 357(d) provides rules for determining the amount of liability treated as assumed for purposes of sections 357, 358(d), 358(h), 362(d), 368(a)(1)(C), and 368(a)(2)(B). Section 357(d) was enacted to clarify the amount of liability treated as assumed where multiple assets secure a single liability and some, but not all, of those assets are transferred to a transferee corporation. Section 362(d) was enacted to clarify and limit the amount of the transferee's basis in the transferred property in certain cases. The legislative history of sections 357(d) and 362(d) indicates that Congress was concerned that if multiple transferees were treated as assuming the same liability, taxpayers might assert that the basis of multiple assets reflects the assumption of the same liability, resulting in assets having a basis in excess of their value and, thus, excessive depreciation deductions and mismeasurement of income. Section 357(d) was intended to eliminate the uncertainty of the tax treatment for such liabilities and to prescribe the tax treatment of such liabilities in a manner that better reflects the underlying economics of the transfer. The legislative history of section 357(d) also reflects that Congress intended to eliminate the distinction between the assumption of a liability and the acquisition of an asset that is subject to a liability. See S. Rep. No. 106–2 at 75 (1999).

Section 357(d)(1)(A) provides that, except as provided in regulations, a recourse liability will be treated as assumed if the transferee has agreed, and is expected, to satisfy it, regardless of whether the transferor is relieved of the liability. In addition, section 357(d)(1)(B) provides that a nonrecourse liability is treated as assumed by the transferee of any asset subject to such liability. Section 357(d)(2), however, reduces the amount of nonrecourse liability treated as assumed pursuant to section 357(d)(1)(B) by the lesser of (1) the amount of such liability that the owner of assets not transferred to the transferee and also subject to such liability has agreed, and is expected, to satisfy or (2) the fair market value of such other assets (determined without regard to section 7701(g)). Section 357(d)(3) directs the Secretary to prescribe such regulations as may be necessary to carry out the purposes of sections 357(d) and 362(d), and to prescribe regulations providing that the manner in which a liability is treated as assumed under section 357(d) is applied, where appropriate, elsewhere in the Code. The rules of section 357(d) apply to determine the amount of liability treated as assumed for purposes of not only those Code provisions listed in section 357(d), but also certain other Code provisions, including sections 584 and 1031.

Section 362(d)(1) provides that in no event will the basis of any property be increased under section 362(a) or (b) above the fair market value of such property (determined without regard to section 7701(g)) by reason of any gain recognized to the transferor as a result of the assumption of a liability. Section 362(d)(2) provides that, except as provided in regulations, if gain is recognized to the transferor as a result of an assumption of a nonrecourse liability by a transferee which is also secured by assets not transferred to such transferee and no person is subject to tax under the Code on such gain, then, for purposes of determining basis under section 362(a) and (b), the amount of gain recognized by the transferor as a result of the assumption of the liability will be determined as if the liability assumed by the transferee equaled such transferee's ratable portion of such liability determined on the basis of the relative fair market values (determined without regard to section 7701(g)) of all of the assets subject to such liability.

Special Analyses

It has been determined that this advance notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Request for Comments

The IRS and Treasury have been studying these and other rules governing the amount of a liability a transferee of property is treated as assuming in connection with a transfer of property. The IRS and Treasury are concerned that some of these rules do not always produce appropriate results and that it might be desirable to modify certain rules by regulation. The following sections describe and explain the issues the IRS and Treasury are studying in this regard. In addition, they describe and explain the rules the IRS and Treasury are considering proposing in a notice of proposed rulemaking.

A. *Assumptions of Nonrecourse Liabilities Generally*

Section 357(d) sets forth one set of criteria that is applied to determine whether a transferee is treated as assuming a recourse liability and a different set of criteria that is applied to determine whether a transferee is treated as assuming a nonrecourse liability. The statute's distinction between the assumption of recourse and nonrecourse liabilities appears to be based on the premise that in the case of recourse liabilities, the parties' agreement and expectation regarding the satisfaction of the liability is a reliable predictor of which party will bear the burden of the liability. In the case of nonrecourse liabilities, the statute presumes that the transferee of assets subject to the liability assumes the entire liability. That amount, however, is reduced by the amount that an owner of other assets subject to that liability has agreed, and is expected, to satisfy, but only up to the amount of the fair market value of the assets that are subject to such liability that are owned by such other owner.

Section 357(d)(1)(B) is consistent with the principles of *Crane v. Commissioner*, 331 U.S. 1 (1947), and *Tufts v. Commissioner*, 461 U.S. 300 (1983). Section 357(d)(2) is consistent with the principle that a party other than the transferee will be responsible for the satisfaction of a nonrecourse liability only to the extent of the fair market value of the property that it owns that is subject to that liability.

The rules that apply to nonrecourse liabilities raise a number of issues that the IRS and Treasury are considering. First, the IRS and Treasury are considering whether the presumption that a transferee of assets subject to a nonrecourse liability is treated as assuming the entire nonrecourse liability absent an agreement is appropriate. Second, the IRS and Treasury are considering whether agreements between the transferor and the transferee regarding the satisfaction of nonrecourse liabilities, other than the agreements described in section 357(d)(2), should be respected. Finally, the IRS and Treasury are considering whether the rules regarding the amount of a nonrecourse liability treated as assumed by a transferee should be based solely on the agreement of the parties and their expectations as to which party will satisfy the nonrecourse liability. Central to these last two issues is the question of whether the rules that apply to assumptions of nonrecourse liabilities should more closely conform to those that apply to assumptions of recourse liabilities. The following sections describe these issues more fully.

1. Amount of Nonrecourse Liability Assumed Absent an Agreement

As described above, pursuant to section 357(d)(1)(B), where some (but not all) of the assets that secure a nonrecourse liability are transferred to a transferee, and the owner of other assets that are subject to such liability does not agree, or agrees but is not expected, to satisfy any of the liability, the transferee is treated as assuming the entire amount of the liability. For example, suppose P owns Asset A, with a basis of $0 and a value of $100, and Asset B, with a basis of $0 and a value of $400, both of which secure a nonrecourse liability in the amount of $500. P also owns Asset C with a basis of $0 and a value of $500. P transfers Asset A and Asset C to S, a newly formed corporation, in exchange for 100 percent of the stock of S in a transfer to which section 351 applies. P and S have no agreement regarding the satisfaction of the nonrecourse liability to which Asset A and Asset B are subject. Pursuant to section 357(d)(1)(B), S is treated as assuming the entire nonrecourse liability. As a result, P recognizes gain in the amount of $500 pursuant to section 357(c).

The IRS and Treasury are concerned that treating S as assuming the entire $500 of the nonrecourse liability in this case does not reflect the underlying economics of the transfer of property. That is, suppose P defaults on the nonrecourse liability and the lender moves to foreclose on Asset A. Absent compensation from P, S may have no incentive to satisfy more than $100 of the nonrecourse liability (either by surrendering Asset A to the lender or by paying the lender $100 in exchange for the release of Asset A from the liability). To address these cases, the IRS and Treasury are considering adopting a rule that would modify the rule of section 357(d)(1)(B) such that, in certain cases where the transferor and the transferee have no agreement regarding the satisfaction of a nonrecourse liability, the transferee will not be treated as assuming the entire amount of the nonrecourse liability. A proposed rule might provide that if one or more of the assets that secure a nonrecourse liability are transferred to a transferee, then the transferee would be treated as assuming a *pro rata* amount of such nonrecourse liability that is a liability of the transferor, determined on the basis of the fair market value of those assets that secure the liability that are transferred to the transferee as compared to the total fair market value of all of the assets that secure the liability that are owned by the transferor immediately before the transfer. The IRS and Treasury invite comments regarding whether the rule of section 357(d)(1)(B) should be modified by regulation and whether the rule described above should be proposed.

2. Agreements to Satisfy Nonrecourse Liabilities

a. Agreement by the Transferee Regarding Satisfaction of a Nonrecourse Liability in the Absence of a Transfer of Assets Subject to that Liability

Section 357(d) contemplates that a transferee may be treated as assuming all or a portion of a nonrecourse liability only if assets that are subject to such nonrecourse liability are transferred to it. For example, suppose P owns Asset A, with a basis of $0 and a value of $100, and Asset B, with a basis of $0 and a value of $400. Asset A is subject to a nonrecourse liability in the amount of $50. P transfers Asset B to S, a newly formed corporation, in exchange for 100 percent of the stock of S and S's agreement with P to satisfy the nonrecourse liability to which Asset A is subject. For purposes of section 357(d), it appears that S is not treated as assuming the $50 nonrecourse liability.

The IRS and Treasury are concerned that there may not be a sufficient distinction between recourse and nonrecourse liabilities to warrant treating a transferee as assuming a nonrecourse liability for purposes of section 357(d) only if assets subject to that liability are transferred to it. Accordingly, the IRS and Treasury are considering whether a transferee that agrees, and is expected, to satisfy all or a portion of a nonrecourse liability should be treated as assuming the nonrecourse liability to the extent of such agreement, even if no assets that are subject to such liability are transferred to the transferee. The IRS and Treasury request comments on this matter.

b. Effect of Agreement by Owner of Nontransferred Property

As described above, pursuant to section 357(d)(2), the amount of the nonrecourse liability that is treated as assumed pursuant to section 357(d)(1)(B) by a transferee of assets subject to the nonrecourse liability is reduced by the lesser of (i) the amount of such liability that the owner of other assets that are subject to such liability but not transferred to the transferee has agreed, and is expected, to satisfy or (ii) the fair market value of such other assets (determined without regard to section 7701(g)). In certain circumstances, the limitation of section 357(d)(2) effectively permits the amount of the nonrecourse liability treated as assumed by the transferee to be reduced only to the extent of the value of other assets subject to the nonrecourse liability, even where the owner of such assets agrees, and is expected, to satisfy an amount of the liability in excess of such value.

For example, suppose P owns Asset A, with a basis of $0 and a value of $100, and Asset B, with a basis of $0 and a value of $400, both of which secure a nonrecourse liability in the amount of $250. P also has $600 in cash. P transfers Asset B to S, a newly formed corporation, in exchange for 100 percent of the stock of S in a transfer to which section 351 applies. P agrees with S, and is expected, to satisfy the entire $250 nonrecourse liability. Pursuant to section 357(d)(1)(B), S is treated as assuming the entire $250 of the nonrecourse liability. Pursuant to section 357(d)(2), however, this amount is reduced by $100, the lesser of the amount of the liability that P has agreed, and is expected, to satisfy ($250) and the fair market value of Asset A ($100). Accordingly, S is treated as assuming $150 of the nonrecourse liability and P recognizes gain in the amount of $150 pursuant to section 357(c). In this case, given that P is expected to satisfy the entire $250 of the nonrecourse liability, the IRS and Treasury are considering whether it is appropriate to treat S as assuming no amount of the nonrecourse liability. In particular, the IRS and Treasury are considering proposing a rule that modifies the rule in section 357(d)(2) such that the amount of the nonrecourse liability a transferee is treated as assuming is reduced to reflect the amount another person has agreed, and is expected, to satisfy, even if such amount is in excess of the fair market value of the assets subject to such liability that such person owns immediately after the transfer. The IRS and Treasury, however, are concerned regarding whether such a rule is appropriate where the nonrecourse liability exceeds the value of the assets securing it.

B. *Subsequent Transfers of Property Subject to Nonrecourse Liabilities*

A transferee of property is treated as assuming all or a portion of a recourse liability if it has agreed, and is expected, to satisfy that liability (or portion). That treatment is not conditioned on any arrangement between the transferee and the original lender; it can be based entirely on an arrangement between the transferor and transferee of the property. The implicit premise underlying this treatment is that the transferee's agreement to be personally liable to the transferor is equivalent to the transferor's agreement to be personally liable to the original lender. This recourse justifies treating the transferee as having assumed the recourse liability. (Conversely, the transferee of property securing a recourse liability will not be treated as assuming the liability without an agreement.)

As described above, the IRS and Treasury are considering applying standards similar to those that apply for purposes of determining whether a transferee of property has assumed a recourse liability to determine whether a transferee of property has assumed a nonrecourse liability where the transferee agrees to satisfy all or a portion of the liability. Such an agreement might create the same level of recourse against the transferee as would an agreement to assume an actual recourse liability. In that case, if property securing the debt is transferred again, the IRS and Treasury are considering whether the amount treated as assumed by the subsequent transferee should be determined with reference to the rules for nonrecourse liabilities (because the original lender's rights continue to be nonrecourse) or for recourse liabilities (because the first transferee agreed, and was expected, to satisfy the liability).

For example, suppose P owns Asset A, with a value of $50, and Asset B, with a value of $100, both of which secure a nonrecourse liability in the amount of $100. In Year 1, P transfers Asset A to S1, a newly formed corporation, in exchange for 100 percent of the stock of S1 in a transfer to which section 351 applies. S1 agrees with P, and is expected, to satisfy $20 of the nonrecourse liability. In addition, P agrees to indemnify S1 to the extent that it has losses in excess of $20 that are attributable to the nonrecourse liability. In Year 2, S1 transfers Asset A to S2, a newly formed corporation, in exchange for 100 percent of the stock of S2 in a transfer to which section 351 applies. S1 and S2 have no agreement regarding the satisfaction of the nonrecourse liability to which Asset A is subject.

The IRS and Treasury are considering two alternatives for determining the amount of liability S2 is treated as assuming upon the subsequent transfer of Asset A following S1's agreement with P regarding the satisfaction of the liability. Under the first alternative, the $20 of the nonrecourse liability assumed by S1 would be treated as though it were a recourse liability of S1, and thus S2 would be treated as assuming no portion of the liability in accordance with section 357(d)(1)(A). Under the second alternative, the $20 of the nonrecourse liability assumed by S1 would be treated as a nonrecourse liability of S1, and thus S2 would be treated as assuming $20 of the liability in accordance with section 357(d)(1)(B). The IRS and Treasury request comments regarding whether the amount of liability (if any) assumed by S2 should be determined with reference to the rules pertaining to assumptions of nonrecourse liabilities or, given S1's agreement with P regarding the satisfaction of the liability, with reference to the rules pertaining to assumptions of recourse liabilities.

The IRS and Treasury also request comments regarding the subsequent treatment of nonrecourse liabilities that are treated as assumed by a transferee where the transferee has not agreed to assume any portion of the nonrecourse liability but rather is treated as assuming all or a portion of the nonrecourse liability pursuant to section 357(d)(1)(B) or a substitute rule that is adopted by regulation.

C. *Identifying the Amount of the Agreement*

1. Transferee at Risk in Excess of Amount it Agreed to Satisfy

The IRS and Treasury are concerned that, where the transferee has agreed to satisfy an amount of a nonrecourse liability that is less than the lesser of (i) the total amount of the nonrecourse liability that is a liability of the transferor, or (ii) the fair market value of the assets that are subject to the nonrecourse liability that are owned by such transferee immediately after the transfer, that agreement may not reflect the amount that the transferee is expected to satisfy, particularly where neither the transferor nor another person has agreed to protect the transferee from liability for any amount of the liability in excess of the amount it has agreed to satisfy. For example, suppose P owns Asset A, with a basis of $0 and a value of $100, and Asset B, with a basis of $0 and a value of $400, both of which secure a nonrecourse liability in the amount of $500. P transfers Asset A to S, a newly formed corporation, in exchange for 100 percent of the stock of S in a transfer to which section 351 applies. S agrees with P to satisfy $80 of the nonrecourse liability but S's agreement with P does not give S the right to seek indemnification from P in the event that S is required to satisfy more than $80 of the liability. Accordingly, if the lender of the nonrecourse liability forecloses on Asset A immediately after the transfer, S will satisfy $100 rather than $80 of the nonrecourse liability.

The IRS and Treasury request comments as to the proper approach to address this situation. One possible approach might be to respect the transferee's agreement to the extent of $80 and to treat the transferee as assuming the additional amount of the liability, if any, that it is expected to satisfy based on the facts and circumstances. Another possible approach is to treat the transferor and the transferee as having no agreement regarding the extent to which the transferee will satisfy the liability.

2. Agreement to Satisfy in Excess of Satisfaction Expectations

The IRS and Treasury recognize that, in certain cases, a transferee may agree to satisfy an amount of a nonrecourse liability that is greater than the amount of such liability that it, in fact, is expected to satisfy. For example, a transferor of assets subject to a nonrecourse liability may require more than one transferee to agree to satisfy the same liability so as to ensure that the transferor ultimately will not incur any loss resulting from the liability. Nonetheless, as described above, the legislative history of section 357 reflects that Congress intended that where more than one person agrees to satisfy a liability or portion thereof, only one would be treated as expected to satisfy the liability or portion thereof. The IRS and Treasury are considering proposing a rule that would provide that, if the transferee has agreed to satisfy an amount of a liability that is greater than the amount that it is expected to satisfy, the transferee will be treated as having agreed to satisfy the amount of such liability that it is expected to satisfy, provided that the transferor, the transferee, and each person related to the transferor and transferee within the meaning of sections 267(b) and 707(b) treat the transferee as having agreed to satisfy the amount of the liability that it is expected to satisfy. If this condition were not satisfied, the transferor and the transferee might be treated as having no agreement regarding the extent to which the transferee will satisfy the liability.

D. *Accounting for Liabilities*

In furtherance of the legislative intent that all or a portion of a liability be treated as a liability of only one person, the IRS and Treasury are considering proposing two rules. The first rule would provide that the amount of a liability treated as assumed by a transferee from a transferor will not thereafter be treated as a liability of the transferor. The second rule would provide that a transferee may not be treated as assuming from a transferor an amount of liabilities greater than the amount of the liabilities of the transferor. The following example illustrates the operation of these two rules.

Suppose P owns Asset A, with a basis of $0 and a value of $100, and Asset B, with a basis of $0 and a value of $400, both of which secure a nonrecourse liability in the amount of $400. P also has $600 in cash. In Year 1, P transfers Asset A to S1, a newly formed corporation, in exchange for 100 percent of the stock of S1 in a transfer to which section 351 applies. P agrees, and is expected, to satisfy $350 of the nonrecourse liability and agrees to indemnify S1 to the extent that it has losses in excess of $50 that are attributable to the nonrecourse liability. In Year 2, P transfers Asset B to S2, a newly formed corporation, in exchange for 100 percent of the stock of S2 in a transfer to which section 351 applies. At that time, Asset A and Asset B are subject to the nonrecourse liability and the amount of the nonrecourse liability remains $400. P and S2 have no agreement regarding the satisfaction of the nonrecourse liability. Assume that the presumption of section 357(d)(1)(B) that the transferee assumes the entire nonrecourse liability to which the property received is subject is not modified by regulation.

Pursuant to section 357(d)(1)(B), S1 would be treated as assuming the entire $400 of the nonrecourse liability. That amount, however, would be reduced by $350 to $50 pursuant to section 357(d)(2). Pursuant to the first rule described above, immediately after the Year 1 transfer to S1, $50 of the nonrecourse liability would no longer be treated as a liability of P as a result of S1's assumption of that amount. Pursuant to the second rule described above, even though Asset B may be subject to the $400 nonrecourse liability for purposes of state law, S2 cannot be treated as assuming more than $350 of the nonrecourse liability, the amount of the nonrecourse liability that is treated as a liability of P at the time of the Year 2 transfer. In this example, because P and S2 had no agreement regarding the satisfaction of the nonrecourse liability, S2 would be treated as assuming $350 of the nonrecourse liability.

E. *Requirements of an Agreement to Satisfy a Liability*

The IRS and Treasury are considering whether proposed rules should set forth the requirements of an agreement between the transferor and the transferee regarding which party will satisfy a liability, and how such an agreement must be evidenced.

F. *Acts Constituting Satisfaction of a Liability*

The IRS and Treasury are also considering whether proposed rules should provide that, for purposes of determining whether a person is expected to satisfy a liability, such person's expected payment (of money or property, including property securing the liability) to the creditor or to a person indemnified with respect to the liability will be considered. The IRS and Treasury request comments regarding whether an agreement to indemnify a person with respect to a liability, and any other agreement, should be treated as an agreement to satisfy a liability.

G. *Collateral Consequences of Satisfaction of a Liability*

The IRS and Treasury believe that, if a liability is satisfied by a person other than the person that the rules of section 357(d) treat as having assumed the liability, the consequences of such satisfaction are determined under general federal income tax principles. For example, the satisfaction may be treated as a deemed payment that is characterized as a capital contribution or a distribution. The IRS and Treasury are considering proposing regulations confirming this result in the context of section 357(d).

H. *Application of Principles of Section 357(d) Regulations in Other Contexts*

As described above, section 357(d) was designed to address the amount of a nonrecourse liability that is treated as assumed by a transferee of property when multiple properties secure the liability, but the transferor either retains or transfers to other transferees some of the property securing the liability. The regulations under section 1001 provide that the amount realized in connection with a sale or other disposition of property includes the amount of liabilities from which the transferor is discharged as a result of the sale or disposition. Section 1.1001–2(a)(1). The IRS and Treasury request comments regarding whether any differences in the amount of liabilities treated as assumed are appropriate for exchanges under section 1001 as opposed to exchanges under sections 351 and 361, or, alternatively, whether the rules adopted under section 357 should also apply for purposes of computing amount realized in transactions governed by section 1001.

In addition, section 7701(g) provides that, for purposes of subtitle A of the Code, in determining the amount of gain or loss with respect to any property, the fair market value of such property is treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject. Comments are requested regarding whether the rule of section 7701(g) should be consistent with those of section 357(d) and the regulations thereunder.

Furthermore, as described above, the rules of section 357(d) also apply to certain Code provisions that are not listed in section 357(d), including section 1031, which permits the nonrecognition of gain or loss on certain exchanges of property of like kind. The IRS and Treasury request comments concerning whether the rules described above should also apply for purposes of these other provisions that specifically invoke section 357(d) as well as other provisions that do not specifically invoke section 357(d).

Finally, certain provisions of the Code, including sections 304 and 336, continue to distinguish between a liability assumed and a liability to which property is subject. Given that the legislative history of section 357 reflects that Congress intended to eliminate the distinction between the assumption of a liability and the acquisition of an asset subject to a liability, the IRS and Treasury are considering whether the proposed rules should provide that, for purposes of sections 304 and 336, and certain other statutory provisions, property is transferred subject to a liability if and only if the liability is assumed under the rules proposed under section 357.

I. *The Basis of Property Received in Exchange for the Assumption of a Liability*

At this time, the IRS and Treasury are not considering modifying section 362(d) or displacing general federal income tax principles that apply for purposes of determining basis under section 1012, including those principles set forth in *Estate of Franklin v. Commissioner,* 544 F.2d 1045 (9th Cir. 1976). Nonetheless, the IRS and Treasury invite comments regarding the extent to which those rules or principles should be modified to reflect the proposal of rules governing the amount of liability treated as assumed in connection with a transfer of property.

William D. Alexander,
Associate Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on May 5, 2003, 8:45 a.m., and published in the issue of the Federal Register for May 6, 2003, 68 F.R. 23931)

Correction to Tax Convention in IRB 2003–17

Announcement 2003–38

Announcement 2003–21, Dutch Agreement on Pension Funds, was inadvertently put into Part IV, Items of General Interest, instead of into Part II, Treaties and Tax Legislation, in Bulletin 2003–17. This Announcement will be moved to Part II when Cumulative Bulletin 2003–1 is printed.

Foundations Status of Certain Organizations

Announcement 2003–39

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

100 Black Men of Greater Gainesville, Gainesville, FL
1213 William Street Corporation, Key West, FL
Adair County Rescue Squad, Inc., Columbia, KY
Adult Affordable Health Clinic, Inc., Boonville, IN
African American Museum of Virginia, Portsmouth, VA
After School Reading is Fundamental Tutorial Program, Inc., Columbus, GA
Agape Academy, Inc., Acworth, GA
Alexandria Township Education Foundation, Incorporated, Pittstown, NJ
Allegan Education Association Scholarship Foundation, Inc., Allegan, MI
American Coalition for Fathers and Children, Lake Forest, CA
Amethyst Legacy, Inc., Columbus, OH
Amherst Celebrates Children, Inc., Amherst, NH
Amys House, Inc., El Paso, TX
Arizona Free Enterprise Educational Foundation, Glendale, AZ
Ark of Time, San Diego, CA
Arroway, Inc., Burlington, VT
Artistic Pursuits, Ltd., Ottawa, IL
Association of Care Management, Urbana, IL
Badger Basketball Boosters, Inc., Madison, WI
Bay Talented & Gifted Support, Inc., Bay Village, OH
Bayside United Soccer Club, Barrington, RI
Bel Air Elementary Parent Teacher Organization, Evans, GA
Belmont High School Hall of Fame, Inc., Belmont, MA
Better Way Foundation, Inc., Chicago, IL
Black Chamber of Commerce of NC, Inc., Charlotte, NC
Bloomington Friends of Forensic, Bloomington, MN
Boston Philanthropic Foundation, Inc., Boston, MA
Bound Brook Educational Foundation, Incorporated, Bound Brook, NJ
Brawley Middle School Parent Teacher Student Organization, Mooresville, NC
Briana Carey Foundation, Inc., Soddy Daisy, TN
Broken Mask Productions, Inc., Weehawken, NJ
Brookland Cayce High School Education Foundation, Cayce, SC
Broward Health Foundation, Inc., Fort Lauderdale, FL
Building Air Quality Alliance, Philadelphia, PA
California Society of Thoracic Surgeons, Modesto, CA
Cecil B. Moore Avenue Local Development Corporation, Philadelphia, PA
Center to Advance Minority Participation in the Bldg. Trades, Providence, RI
Chaparral High School Parent Task Force, Temecula, CA
Chapel Development Corporation, Inc., Mobile, AL
Charles Apartments Tenants Association, Marina, CA
Chatham Athletic Club, Inc., W. Chatham, MA
Cherry Holmes Street Club, Cleveland, OH
Chicago Principals & Administrators Association, Chicago, IL
Childcare By Choice, Graniteville, SC
Children in Crisis, Inc., Milwaukee, WI
Choices for Quality Living, Harrisburg, PA
Chris Binkley Funeral Foundation, Lansing, MI
Christian Mission Learning Foundation, Jackson, MS
Christmas in April Newburyport, Newburyport, MA
Christmas in April West Contra Costa County, Richmond, CA
Cincinnati Charities for Children, Inc., Cincinnati, OH
Citizens Against Domestic Violence, Warrenton, NC
Ciudad Mistica, Inc., Sabana Grande, PR
Clergy Response Institute, Inc., Edmond, OK
Clifdale Elementary School PTO, Spartanburg, SC
Clinton Laurens Public Access Communications, Inc., Clinton, SC
Co-Creators With the Earth Foundation, Mt. Shasta, CA
Coalition of Essential Schools Regional Center at St. Louis, Florissant, MO
Cobra Soccer Club, Eureka, MO
Coles School of Performing Arts, Redlands, CA
Comite Accion Social Sida, Inc., Mayaguez, PR
Common Purpose Institute, Atlanta, GA
Commonwealth Child Development Institute, Clifton, VA
Communication Avenue, Apex, NC
Community Accountability Project Cap, Milaca, MN
Community Awareness, Inc., Lynn, MA
Community Connection, Inc., Oelwein, IA
Community Health Connections, Fitchburg, MA
Community Renaissance Group, Inc., Norristown, PA
Community Youth Home Corporation of Richmond County, Raleigh, NC
Coppin Heights-Franklin Square Community Works, Baltimore, MD
Corporation for Vocal and Artistic Excellence, Springfield, MO
Crestmont Parent-Teacher Club, Roseville, CA
Critical Times, Inc., Charlotte, NC
Crossroad Revival, Parsons, WV
Dallas Urban League Community Development Corporation, Dallas, TX
Decaturnet, Inc., Decatur, IL
Delta Visions, Winston Salem, NC
Design Foundation, Incorporated, Cambridge, MA

District No. 429 Education Foundation, Pontiac, IL
Dollar Foods, Inc., Dorchester, MA
East Central Iowa Chapter of the American Institution of Banking, Swisher, IA
Education Center at Miami Lakes, Inc., Miami Lakes, FL
Educational Foundation for a Free World, Dewitt, MI
Edward S. Curtis Foundation, Minneapolis, MN
Elizabeth A. Campbell Poodle Research & Educational Institute, Scurry, TX
Ellington Homes, Inc., Olympia Fields, IL
Encore Theatre, Inc., Laurinburg, NC
Endless Forest International, Inc., Silver Spring, MD
Environmental League of Massachusetts, Inc., Boston, MA
Eureka Fire Pals Corporation, Eureka, CA
Eve For Women, Inc., Ocala, FL
Exodus II, Inc., Sewell, NJ
Ez Capacity Builders, Inc., Savannah, GA
Falls Church Chamber Orchestra, McLean, VA
Family Services Coalition, Inc., Jacksonville, FL
Fatherhood Coalition, Santa Barbara, CA
Federal City Public Service Foundation, Washington, DC
Females Overall Committed to Unity in Sports, Seal Beach, CA
Ferdinand Learning Center, New Orleans, LA
Field Committee, Inc., Cutten, CA
Florence County Historical Society, Inc., Florence, SC
Florida Alzheimers Coalition, Inc., Melbourne, FL
Florida Pops Orchestra, Inc., Orlando, FL
Fluid Measure Performance Company, Chicago, IL
Forest Hill Park Conservancy, E. Cleveland, OH
Forever Young Foundation, Inc., Longmeadow, MA
Forgotten Victims, Inc., Dayton, OH
Fort McPherson-East Point Partnership, Inc., Newnan, GA
Foster Foundation for Education in Aviation, Sherman, CT
Foundation for Electric Vehicle Education, Phoenix, AZ
Friends of Deridder Elementary, Inc., Deridder, LA
Friends of Ida Lee, Leesburg, VA
Friends of Picketts Mill State Park, Inc., Dallas, GA
Friends of Sabis International Charter School Tr., Springfield, MA
Friends of the Ansonia Historical Commission, Inc., Ansonia, CT
Friends of the Woburn Public Library, Inc., Woburn, MA
Friends of Trumbull County Family Court, Warren, OH
Gallatin County Extension Foundation, Inc., Warsaw, KY
Gateway Disabled Ski Program, Fenton, MO
Gateway Public Radio, Inc., Brewton, AL
Georgetown Elementary Parent Teacher Organization, Savannah, GA
Goodwill Enterprises, Providence, RI
Grace House Center for Loss & Separation, Waterloo, IA
Greater Redmond Chamber Foundation, Redmond, WA
Greenlawn Booster Club Association, Kenner, LA
Hale Road Elementary Community Organization, Painesville, OH
Hamilton Central Business Special Improvement District, Inc., Hamilton, OH
Hargis Christian Retreat, Inc., Chelsea, AL
Harrison Area Razorback Club, Inc., Harrison, AR
Harvest Kitchen of Greater Philadelphia, Philadelphia, PA
Highland Neighborhood Development Corporation, Gastonia, NC
Hilltop Humane Society, Inc., Randolph, MA
Hollidaysburg Soccer Association, Hollidaysburg, PA
Holmdel Foundation for Educational Excellence, Incorporated, Red Bank, NJ
Home Start, Inc., Mount Holly, NJ
Howard County Sesquicentennial Committee, Inc., Ellicott City, MD
In Harms Way, Inc., Clayton, MO
Incorporated Words, Inc., Boston, MA
Independence Magazine, Inc., Washington, DC
Indian Orchard Community Development Corporation, Indian Orchard, MA
Inland Charities, Inc., Riverside, CA
Inspire Foundation, San Pedro, CA
International Coalition of Men and Women Organization, Missouri City, TX
International Cord Blood Society, Hingham, MA
International Society for Apheresis, Painesville, OH
Irvington Enterprise Zone Development Corporation, Irvington, NJ
Islamic Heritage Foundation, Philadelphia, PA
Jefferson Baroque Orchestra, Inc., Cave Junction, OR
Jefferson Institute, Inc., Indianapolis, IN
Jobs for Georgia Graduates, Inc., Atlanta, GA
Jobs for Ohio Graduates of Lorain County Schools, Oberlin, OH
Joyce Foundation, Budd Lake, NJ
Jubilee Theatre Productions, Inc., Poplarville, MS
Julius R. Pollatschek Foundation, Cranford, NJ
Kid Konnection, Inc., South Orange, NJ
Kids Chance of Maryland, Inc., Baltimore, MD
Kids Voting of Middle Tennessee, Inc., Nashville, TN
La Paz Music Boosters, Mission Viejo, CA
Ladue Early Childhood Parents Association, Frontenac, MO
Learning Skills Institute, Inc., Worcester, MA
Lighthouse Presentations, Inc., Myrtle Beach, SC
Los Angeles Community Health Center Coalition, Arleta, CA
Louisiana Fbla Foundation, Inc., Baton Rouge, LA
Louisiana Fins Association, Inc., Houma, LA
Lutheran Social Services of Central Ohio Grovewood II Housing II, Columbus, OH
Lutheran Social Services of Central Ohio Little Brook Housing, Inc., Columbus, OH
Lutheran Social Services of Central Ohio Village Housing, Inc., Columbus, OH
Madison PTO, Blaine, MN
Magnet Educational Foundation, Inc., New London, CT

Maine Alliance of Partners in Education, Kingfield, ME
Marion Education Foundation, Inc., Marion, OH
Massachusetts Child, Inc., Boston, MA
Massachusetts Rural Development Council, Amherst, MA
Massachusetts State Taekwondo Association, Inc., W. Somerville, MA
Matthew P. Pellegrino II Memorial Foundation, Delanco, NJ
McKinley III, Chicago, IL
Metropolitan Atlanta Musicians Association, Inc., East Point, GA
Michael Hobart Brown Memorial Scholarship Fund, Shepherdstown, WV
Michigan Horticultural Society, Oak Park, MI
Michigan Resident Leadership Network, Lansing, MI
Midtown Collaborative, Little Rock, AR
Minneapolis Initiative Against Racism, Minneapolis, MN
Minnesota Fund for the Arts, Minneapolis, MN
Minute Men Task Force, Newport News, VA
Mobile Community Living, Inc., Mobile, AL
Mobile Shared Living, Inc., Mobile, AL
Montgomery County Orchestra Society, Narberth, PA
Morgan-Madison Credit Counseling, Ocoee, FL
Mount Carmel Homes, Inc., Philadelphia, PA
Music City Singles Square Dance Club, Nashville, TN
My Brothers Keeper Community Outreach, Philadelphia, PA
My Fathers House Ministries, Winston Salem, NC
My Mothers House, Inc., Philadelphia, PA
National Association of Weed & Seed Communities, Brooklyn, NY
National Fibromyalgia Association, Oroville, CA
National Housing Trust Community Development Fund, Washington, DC
National Rehabilitation Awareness Foundation, Scranton, PA
Ned Beatty Hope for Children Classic, Inc., Louisville, KY
Neighborhood Involvement Association, San Diego, CA
New Richmond Elementary PTO, New Richmond, OH
New River Arts & Crafts Association, Inc., Oakland Park, FL
New School Parents Association, McLean, VA
Noahs Ark Foundation, Inc., St. Paul, MN
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North Florida Indian Foundation, Inc., Panama City, FL
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On Our Own of Charles County, Inc., White Plains, MD
One Small Step, Pittsburgh, PA
Organizacion Puertorriquenos Unidos, Inc., Hartford, CT
Osmosis Theaterworks, Inc., Baltimore, MD
Our Forgotten People International, Crestline, OH
Outreach Thrift, Inc., Burlington, NC
Pact Corporation, Le Mars, IA
Paintsville Parent Teacher Organization, Paintsville, KY
Paraclete Ministries, St. Louis, MO
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Parkway Patrons Foundation, Inc., N. Miami Beach, FL
Paterson Rotary Club Foundation, Inc., Clifton, NJ
Pegasus Therapeutic Riding, Inc., Charlotte, NC
Pennsylvania Preservation Consortium, Inc., Pittsburgh, PA
Pet Gazette, Inc., Staunton, VA
Peter Dimuro Performance Associates, Takoma Park, MD
Peter Pan Child Development Center, Inc., Pompano Beach, FL
Pianosa Group, Philadelphia, PA
Pine Lawn Equality Association, Pine Lawn, MO
Plainfield Interfaith Neighborhood Corporation for Housing, Fort Washington, NY
Plantersville Community Development Service Project, Georgetown, SC
Playright Performing Arts Center, Inc., Redan, GA
Prevent Child Abuse Kane County, Inc., Geneva, IL
Progressive Alternative Program, Inc., Decatur, GA
Prom Gala, Inc., Monroe, MI
Prospect Indoor Soccer, Inc., Prospect, CT
PTSA Michigan Congress of Parents Teachers and Students, Lansing, MI
Puerto Rican Street Animal Project, Inc., Salem, OR
Quality Education Commission, Inc., Milwaukee, WI
Raritan Valley Youth Chorale, Inc., Martinsville, NJ
Real Life Counseling Ministries, Inc., Harrisburg, PA
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Russian-American Music Association, Inc., Newton, MA
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Scama Scholarship Foundation, Inc., Orange Park, FL
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Second Chance in Western North Carolina, Inc., Mars Hill, NC
Second Home for Animals, Inc., Boston, MA
Second Step Ministries, Inc., Augusta, GA
Self Empowerment Life Foundation, Hemet, CA
Seminole Club of Hillsboro County, Inc., Tampa, FL
Shasta Works, Inc., Redding, CA
Sherwood Educational Volunteers, Portland, OR
Sister Circle, Chicago, IL
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Sloan Street Housing Development Corporation, Inc., Andeson, SC
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SMF-Haven of Hope, Hampton, VA
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South Side Educational Center for Youth, Chicago, IL
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Special Blessings Opportunity Center, Ocala, FL
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Stones Network, Inc., Laguna Beach, CA
Stop Our Suffering, Inc., Southgate, MI
Sultana High School Cross Country Booster Club, Hesperia, CA
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Survive Until a Cure, Inc., Westport, CT
Temple of Raising Hope, Philadelphia, PA
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Thurgood Marshall Family Resource Center, Ashtabula, OH
Tomorrows Promise the Original Company, Maitland, FL
Transforming Lives for Christ, Richmond, VA
Trauma Recovery Services, Iowa City, IA
Trees for Beaufort County, Beaufort, SC
Tri County Community Health Partnership, Inc., Murphy, NC
Troy Youth Hockey Association, Troy, MI
Two Rivers Family Health Center, Inc., Easton, PA
Ukiah Community Arts Center Project, Redwood Valley, CA
Ukiah High School Alumni Assoc., Ukiah, CA
Union Junior High School Boosters, Benwood, WV
United in Strength, Philadelphia, PA
United States Pastors Association, Riverside, CA
Vasquez Mustang Booster Club, Valencia, CA
Victory Village Center for Community Youth, Detroit, MI
Virginia Alternative School Division, Inc., Richmond, VA
Virtual Baptist Seminary, Alexandria, LA
Visiting Volunteers Association, Columbia, MO
Wall of Liberty Trust Corp., Winchester, VA
Walnut Historic Neighborhood Assn., Inc., Waterloo, IA
Wanaque Community Education Foundation, Inc., Wanaque, NJ
Warren United Soccer Club, Inc., Gurnee, IL
West Hartford Public Schools Foundation, Inc., W. Hartford, CT
West High School Fitness Center, Manchester, NH
Weymouth Educational Foundation, Inc., South Weymouth, MA
Wildwood Crest Education Association Philanthropic Fund, Inc., Wildwood Crest, NJ
Williamston Downtown, Inc., Williamston, NC
Willie James Jones Foundation, San Diego, CA
Winters Youth & Family Centre, Winters, CA
Wisconsin Center for First Amendment Studies, Milwaukee, WI
Wolfeboro Rotary Club Charities, Inc., Wolfeboro, NH
Womens Institute for Research Education & Development, San Luis Obispo, CA
Wooster High School Music Parents Assoc., Wooster, OH
World Percussion Festival-Fort Lauderdale, Inc., Ft. Lauderdale, FL
World Tekwondo Masters Association, Inc., Rockville, MD
World Water for All, Inc., Rockville, MD
Worldwide Internet Network Service, Inc., New Bedford, MA
Wright Foundation, Florissant, MO
Yes Foundation, Inc., Plainfield, NJ
Youth for Tomorrow, Inc., Cleveland Heights, OH

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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[2] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2002–26 through 2002–52 is in Internal Revenue Bulletin 2003–1, dated January 6, 2003.

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